

DOCUMENT RESUME

03182 - [A2233343]

[Retroactive Promotion with Backpay]. B-187923. August 9, 1977.
3 pp.

Decision re: Robert L. Irwin; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Forest Service.

Authority: 55 Comp. Gen. 1062, 55 Comp. Gen. 515, 52 Comp. Gen.
631, 50 Comp. Gen. 581, 3-173831 (1971), B-187287 (1977),
B-187847 (1977), *Dianish et al. v. United States*, 183 Ct.
Cl. 702 (1968), *United States v. Testan et al.*, 44 U.S.L.W.
4245, decided March 2, 1976.

W. S. Otterson, Director of Personnel Management for
the Forest Service, requested an advance decision as to whether
an employee may receive a retroactive promotion and backpay for
performing duties while on detail at a higher grade level for
the period prior to which the position was established and
classified at the higher grade. Although the duties performed
were normally assigned to a higher level position, the claim may
not be paid since an employee cannot be promoted to a position
which has not been classified. (Author/SC)

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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-187923

DATE: August 9, 1977

MATTER OF: Robert L. Irwin - Retroactive promotion with
backpay

DIGEST: Employee claims backpay for period
when he performed duties normally
assigned to higher level position.
Claim may not be paid since employee
cannot be promoted to position
which has not been classified.

This action arises from a request for an advance decision by Mr. W. R. Otterson, Director of Personnel Management, Forest Service, United States Department of Agriculture, as to whether an employee of that agency, Mr. Robert L. Irwin, may receive a retroactive promotion and backpay for performing duties while on detail at a higher grade level from the 121st day of such detail February 4, 1976, to the date the position was established and classified on May 21, 1976.

The pertinent facts and circumstances upon which the submission is based may be summarized as follows: During the period July 1975 until February 1976, when he was reassigned, another employee of the Forest Service was officially assigned to a grade GS-15 Program Manager position at the Pacific Southwest Research Station but was on detail at the Rocky Mountain Research Station. The claimant, Mr. Irwin, was assigned to the position of Acting Program Manager on October 6, 1975, at the Pacific Southwest Research Station. On April 12, 1976, the grade GS-15 Program Manager position at that station was evaluated to the GS-14 grade level. Mr. Irwin continued to perform in the position of Acting Program Manager until his promotion to grade GS-14 on June 6, 1976. Even though the Forest Service had not classified the duties to which the claimant was assigned on October 6, 1975, the agency reports that he was required to perform a difficult job in the absence of the Program Manager including coordinating important elements of the position, consulting with contractors, coordinating multiagency problems, and coordinating the preparation of operational manuals. A temporary promotion could not be effected until May 21, 1976, as there was no position in which Mr. Irwin could be placed and a position could not be established until the predecessor position had been abolished.

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The specific question asked is whether an employee may be paid for performing at a higher grade level when the position has not been properly classified? If so, would Mr. Irwin be entitled to backpay in this situation?

In our decision, Matter of Willie W. Cunningham, 55 Comp. Gen. 1062 (1976), it was held that an employee cannot be promoted to a position that has not been classified. We stated, in pertinent part, that the classification of positions is within the discretion of the agency concerned, subject to requests for review and appeals by employees of the agency. It was then concluded, commencing at page 1065, as follows:

"As noted in 55 Comp. Gen. 515 (1975), the Civil Service Commission's regulations for position classification provide that the effective date of a classification action taken by an agency or a classification action resulting from an employee's appeal is the date the action is approved or the appeal is decided or a date subsequent to that date. See C.F.R. 511.701 et seq. and 532.701 et seq. (1975). Absent any indication that the grievant's position was illegally or intentionally misclassified, there is no authority to allow a retroactive promotion with backpay on the ground that there was an erroneous classification decision. 52 Comp. Gen. 631 (1973); 50 id. 581 (1971); and B-173831, September 3, 1971. Therefore, until the position was classified upward and she was promoted, the grievant was not entitled to the pay of the higher graded position. Dianish et al. v. United States, 183 Ct. Cl. 702 (1968). In this connection we point out that the above rule concerning classification actions has recently been confirmed by the Supreme Court of the United States in United States v. Testan et al., 44 U.S.L.W. 4245, decided March 2, 1976."

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See also Matter of Hubert J. Buteau, B-187287, May 13, 1977, and Matter of Walter F. Ray and Joseph D. Elam, B-187847, January 25, 1977.

In view of our determinations in the aforesaid decisions, a retroactive promotion and backpay may not be made to Mr. Irwin. Accordingly, both questions are answered in the negative.

57 K. 112
Deputy Comptroller General
of the United States